

## **MEETING # 2 January 3**

At a Joint Meeting of the Madison County Board of Supervisors on  
January 3, 2007 at 7:30 p.m. in the Madison County Administrative Center  
Auditorium:

PRESENT: Eddie Dean, Chairman  
James L. Arrington, Vice-Chairman  
William L. Crigler, Member  
Bob Miller, Vice Chairman  
Clark Powers, Member  
V. R. Shackelford, III, County Attorney  
Lisa R. Kelley, County Administrator

Chairman, Eddie Dean called the meeting to order and stated the following cases would be discussed tonight:

Case #S-12-06-63, which is a request by Mitchell Mountain LLC for a plat of a subdivision of land to create three (3) lots with residue on Route 731 at Fordsville, zoned A-1. The final plat has been approved by the Madison Health Department and Virginia Department of Transportation.

Tom Underwood was present and stated that he runs Mitchell Mountain LLC and stated the parcel includes 161 acres that go from Leon Road to Crooked Run – plans include breaking off three (3) 3.0 acre lots with residue of about 150 acres.

Bob Miller asked if any portions of the property were sludge treated with biosolids.

Tom Underwood stated he was not aware of any such treatment; he stated he was very much aware of the property's title history and stated there have been three (3) owners prior to himself since 1846 (i.e. Bicker's Family, Virginia Children's Baptist Home, Skeet Ulrich) and the property has been farmed for the past twenty (20) years by Todd Kilby; additionally, none of those individuals used sludge which would have impacted his decision to purchase the property. Furthermore, he stated all previous owners were provided a question which asked about biosolid treatment of the property, to which they all answered "no" (i.e. HUD settlement statement).

Bob Miller asked if any research was conducted to verify the aforementioned factor.

Tom Underwood stated that he conducted all the research that was available to him; however, he did not conduct soil testing to see if there was any sludge applied to the property but feels that based on the current state of fertility, he doubts there was any application of sludge in an extremely long time.

After discussion, on motion of William L. Crigler, seconded by Bob Miller, the subdivision request is approved as recommended by the Madison County Planning Commission, with the following vote recorded:

Eddie Dean	Aye
James L. Arrington	
William L. Crigler	Aye
Bob Miller	Aye
Clark Powers	Aye

Case Number S-01-07-01, which is a request by Jesus or Brenda Burgos for a plat of a subdivision of land to create two (2) lots with residue. Parcels A and B will be on a fifty foot (50') right-of-way off Route 704 and the residue will be on Route 704. This tract of land is located on Route 704 near Haywood, zoned A-1. The final plat has been approved by the Madison Health Department and the Virginia Department of Transportation.

Jesus and Brenda Burgos were present and stated they desired to establish two (2) lots with residue.

Rodney Lillard asked if a conditional drain field would be utilized.

Brenda Burgos indicated the current drain field is situated below the house and is not an alternative system.

Robin Silas-Abed was present and stated she owns the adjacent property next to the applicant and verbalized concerns regarding the location of the proposed house on the property; she feels a privacy wall on her own property will not provide adequate privacy from the applicant.

Rodney Lillard asked Ms. Silas-Abed how far her house was from the property line, to which she stated her home was 125 feet from the property line.

James Ballard stated the applicant has proposed to locate their house 150 feet from the property line which should be more than adequate.

Robin Salas-Abed stated approval of the applicant's request would hinder her future plans for her personal property; additionally, she feels the applicant's request will de-value her personal property.

Rodney stated the setback requirement appears to be in place and also indicated the applicant might also have concerns about de-valuation of their personal property as well.

Victor Silas was present and indicated his mother is questioning what can be done to deter the applicant's request.

Rodney Lillard explained the procedures regarding setbacks and requirements of the County's Subdivision Ordinance which appear to have all been met by the applicant for the case being presented at tonight's meeting.

After discussion, on motion of James L. Arrington, seconded by Bob Miller, the subdivision request is approved as recommended by the Madison County Planning Commission, with the following vote recorded:

Eddie Dean	Aye
James L. Arrington	Aye
William L. Crigler	Aye
Bob Miller	Aye
Clark Powers	Aye

Case Number S-01-07-02, which is a request by E. Paul or Nancy L. G. Williams for a plat of a subdivision of land to create two (2) lots with residue. Lot 2 will be on Route 709 and Lot 3 and the residue will be on a fifty foot (50') right-of-way off Route 709. This tract of land is located on Route 709 near Aroda, zoned A-1. The final plat has been approved by the Madison Health Department and the Virginia Department of Transportation.

Eugene Paul & Nancy Williams were present and wished the Madison County Planning Commission a "happy New Year" and stated there was nothing additional to add to their aforementioned request.

Bud Kreh verbalized concerns pertaining to the entrance to the property and whether there will be sufficient sight distance.

Nancy Williams stated the sight distance area has been measured and additional trees were removed which satisfied the requirements as established by the Virginia Department of Transportation.

Pete Elliott asked if there was an easement on the North side of the property (i.e. on the curb) in the event the trees were re-established in the current spot.

Nancy Williams stated if a tree should grow back in the spot, it will be removed.

Betty Grayson stated that she spoke with Jimmy Terrell of the Virginia Department of Transportation this afternoon regarding this case and it was noted that at the time the plat was signed, the required sight distance of 280 feet was satisfied (i.e. neighbor allowed cutting of trees to satisfy the requirement); however, no site easement was required at that time, only removal of the trees.

James Ballard stated he viewed the site and has concerns as to what the Virginia Department of Transportation has allowed at the site.

Eugene Williams asked if there was an assumption being made to indicate the Virginia Department of Transportation was in error regarding the manner in which they approved the sight plan for this case.

James Ballard explained criteria involved in past cases (i.e. site easement, safety, etc.); however, he further stated he was not indicating the Virginia Department of Transportation was in error regarding this particular case, but he did not see justification how the current status was attained; therefore, he was unable to voice approval of this case.

Eugene Williams asked if he would need to address the Virginia Department of Transportation regarding concerns about his case or whether the Madison County Planning Commission will handle the concerns; he further asked the Madison County Planning Commission to put in writing what will need to be addressed with the Virginia Department of Transportation.

Rodney Lillard indicated the applicant(s) will need to address the Virginia Department of Transportation; he further added the requirements for this case are quite unusual and that a sight easement is usually recorded.

Nancy Williams stated she co-manages the neighboring property and has written authorization to approve any needed changes of concern.

Rodney Lillard stated in the past a sight easement is generally recorded and attached to the deed – this will provide necessary details pertaining to the property in the event the property is sold in the future.

Pete Elliott asked when the Virginia Department of Transportation approved the request, to which Betty Grayson indicated as being November 1, 2006.

Mary Breeden expressed her concerns regarding the applicant's disappointment that a member of the Virginia Department of Transportation was not present at tonight's meeting and also stated the discrepancy was in no way the applicant's fault.

Rodney Lillard inform the applicant the Madison County Planning Commission will have a Workshop Meeting on January 18, 2007 and the next Joint Meeting will be February 7, 2007 – he advised the applicant the case could be voted on tonight or be tabled for an additional thirty (30) days in order to clarify the issues at hand.

Eugene Williams asked if something could be attached to tonight's decision which will avoid any future delay in approving the request.

Mary Breeden stated the Madison County Planning Commission will need approval from the Virginia Department of Transportation before this particular request can be approved; she further suggested the applicant table tonight's request and return to Jimmy Terrell of the Virginia Department of Transportation and ask him to attend next month's meeting.

Mary Breeden asked if anyone informed Jimmy Terrell about tonight's meeting.

Betty Grayson stated she spoke with Jimmy Terrell about tonight's meeting and he indicated he would be unable to attend due to administrative changes at the Virginia Department of Transportation and his position did not allow him to attend future Madison County Planning Commission meetings; she was unsure as to whether another candidate would be available to attend future meetings.

Bob Miller asked if the Board could make a provision to request a satisfactory answer from the Virginia Department of Transportation as to why they alleviated from their past history of approving cases without a sight easement.

County Attorney, V. R. Shackelford, III indicated the Board would have to decide one way or the other and that a “loose end” could not remain regarding this case.

Clark Powers stated the Virginia Department of Transportation appears to be going through a great deal of reorganization which has caused some confusion and recommends the Board proceed with approving the case based on the facts provided to date.

Bob Miller asked the applicant if it would be possible to attain a sight easement from the current owner; he also stated the applicant’s request meets the County’s Ordinance simply because it does have approval by the Virginia Department of Transportation; however, as addressed at tonight’s meeting, it appears there may be a deviation from the normal procedures in conjunction with approval.

Bob Miller further stated the Madison County Board of Supervisors is charged with the responsibility of the safety of the citizens the same as the Virginia Department of Transportation – normally the Board relies heavily on the approval of the Virginia Department of Transportation which recommends all roadway requests are safe.

Nancy Williams stated she would take care of this oversight.

Chairman, Eddie Dean reiterated the only reason the Board could deny this request due to the fact is if the applicant doesn’t meet the County’s Ordinance.

After discussion, on motion of James L. Arrington, seconded by Clark Powers, the subdivision request is approved as recommended by the Madison County Planning Commission, with the following vote recorded:

Eddie Dean	Aye
James L. Arrington	Aye
William L. Crigler	Aye
Bob Miller	Aye
Clark Powers	Aye

Case Number S-01-07-03, which is a request by G. Scott Lohr for a plat of a subdivision of land to create two (2) lots with residue on Route 715 near Rochelle, zoned R-1. The final plat has been approved by the Madison Health Department and the Virginia Department of Transportation.

Scott Lohr was present and stated there was no additional information to add pertaining to the aforementioned case.

Robin Corum was present and stated the lot was to the rear of his property – he asked if the applicant was planning to build on the site, would it drain on his property.

Rodney Lillard stated the plat indicates a proposed house site to the front of the property.

After discussion, on motion of William L. Crigler, seconded by Clark Powers, the subdivision request is approved as recommended by the Madison County Planning Commission, with the following vote recorded:

Eddie Dean	Aye
James L. Arrington	Aye
William L. Crigler	Aye
Bob Miller	Aye
Clark Powers	Aye

Rodney Lillard stated he had received the budget for the Madison County Planning Commission from Teresa Miller, Finance Director, and asked if the Commission desired to increase or maintain the funding request.

Rodney Lillard asked if a bill has been received from PD-9 for the County's Comprehensive Plan, to which Betty Grayson indicated has not yet been received.

After discussion, it was determined the Madison County Planning Commission would submit the same budget request as last year, which Betty Grayson, Zoning Administrator, will take care of.

Rodney Lillard reminded the Madison County Planning Commission of the upcoming Sub-Committee meeting that has been scheduled for Monday, January 8, 2007 in the auditorium at 7:30 p.m.; he also stated election of a Chairman and Vice-Chairman for 2007 will be done at the January 17<sup>th</sup> workshop meeting.

County Attorney, V. R. Shackelford, III suggested the Madison County Planning Commission recess prior to making a decision on the Flood Plain Ordinance.

Chairman, Eddie Dean stated the Board will need to reappoint Jacquelyn Eisenberg to the Madison County Planning Commission as her commission expired September 14, 2006.

After discussion, on motion of James L. Arrington, seconded by William L. Crigler, the Board reappointed Jacquelyn Eisenberg to another term on the Madison County Planning Commission, ending September 14, 2010, with the following vote recorded:

Eddie Dean	Aye
James L. Arrington	Aye
William L. Crigler	Aye
Bob Miller	Aye
Clark Powers	Aye

Chairman, Eddie Dean asked James Ballard if he would be interested in serving as a liaison along with the Madison County Board of Supervisors on the Blue Ridge Shenandoah National Park Committee for the upcoming year.

William L. Crigler advised the committee meets once or twice annually.

James Ballard accepted the appointment.

Chairman, Eddie Dean asked if Bob Miller and James L. Arrington could decide which would be the representative for the PD-9 Regional Transportation representative for the Madison County Board of Supervisors for the year.

After discussion, James L. Arrington agreed that he would accept alternating monthly meetings for the aforementioned entity along with Bob Miller for 2007.

Chairman, Eddie Dean stated the Joint Public Hearing will now be brought into session to discuss the Flood Plain Ordinance for Madison County.

Rodney Lillard asked County Attorney, V. R. Shackelford, III to explain the aforementioned Ordinance for those in attendance.

County Attorney, V. R. Shackelford, III stated the Flood Plain Ordinance has been strongly recommended to Madison County on behalf of FEMA (Federal Emergency Management Association) and the Department of Conservation & Recreation. He stated the Ordinance basically stems for the restructuring of the maps for the one hundred year flood plain.



Betty Grayson stated the maps have recently been received and are in the Zoning Office located at 414 N. Main Street in the Town of Madison.

County Attorney, V. R. Shackelford, III stated the map will allow all citizens with homes in a designated flood plain to be able to purchase flood insurance only in the event the County adopts the proposed Flood Plain Ordinance as presented at tonight's meeting.

County Attorney, V. R. Shackelford, III stated there appear to have been no significant changes to the Ordinance; however, there has been some editing which was done by FEMA of the County's existing Flood Plain Ordinance in an effort to ensure it matches all regulations as mandated by FEMA and all state regulations.

County Attorney, V. R. Shackelford, III indicated that all changes have been underlined in the proposed Ordinance and feels that none of them are substantive changes; although the one major change denotes a special flood plain district map which he interprets to be an expanded flood plain district based upon the one hundred year flood plain data. He stated if a citizen resides in what was traditionally denoted as a flood plain district or a special flood plain district, the requirements are still basically the same.

County Attorney, V. R. Shackelford, III stated there was one item that was overlooked which covered repair/rehabilitation of a historic structure(s) in a flood plain district, which has been added.

County Attorney, V. R. Shackelford, III explained the aforementioned clause and stated all repairs will be made in accordance as to what is outlined in the proposed Ordinance.

County Attorney, V. R. Shackelford, III also explained the reason the Ordinance has to come before the Madison County Board of Supervisors and Madison County Planning Commission is that the Flood Plain Ordinance is a part of the County's Zoning Ordinance; therefore, the same procedures will need to be followed as when amendments are being incorporated into the Zoning Ordinance.

James L. Arrington asked about proposed changes to the County's flood plain map.

Betty Grayson stated no significant changes were denoted when she met with the two (2) FEMA representatives; although there was a notation pertaining to the

flood of 1995, there were no significant changes made to the Graves Mill area due to the lack of funding and manpower to incorporate a full flood study on the area.

Bob Miller asked for clarification of a statement made on Page 6 (Article IV – Section 4.1 – Design Criteria for Utilities & Facilities “**on-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding**”) and how this statement should be interpreted.

County Attorney, V. R. Shackelford, III stated he believed there were waste disposal systems that can be engineered so as to withstand flooding and are very expensive, which he feels will be required.

Bob Miller asked if the aforementioned request will be coordinated with the Madison Health Department, which the Board is heavily relying on; however, the recommendation may not actually meet the requirements contained in the aforementioned Ordinance.

County Attorney, V. R. Shackelford, III stated this is the wording that was provided by FEMA and the Department of Conservation & Recreation.

County Attorney, V. R. Shackelford, III stated it is assumed the Agencies are coordinating their recommendations between one another and that all regulations are being met; however, he stated he has not conversed with the Madison Health Department regarding this issue.

Rodney Lillard asked if a citizen wanted to build in a flood plain zone, the applicant would be required by the County’s Ordinance to build according to that section and not the Madison Health Department’s requirements.

County Attorney, V. R. Shackelford, III stated the Madison Health Department will be the Agency that determines whether the citizen(s) follow the established guidelines.

Betty Grayson stated that once building has commenced, the applicant will also be required by the Zoning Ordinance to follow guidelines as established by the Madison Health Department.

Rodney Lillard asked Betty Grayson if she was aware of the number of citizens who actually take advantage of flood insurance, to which she was unsure of at this time.

County Attorney, V. R. Shackelford, III stated that during closing proceedings involving a flood plain, the surveyor will usually denote this information on the survey; if the property is denoted as being situated in a flood plain zone, the lender usually requires flood plain insurance.

P.J. Williams was present and verbalized concerns to the date “January 5, 2007” as denoted on the bottom of Page 3 and whether this was correct.

County Attorney, V. R. Shackelford, III stated this is the “effective date” which the maps were printed.

Ruth Lillard was present and questioned the definition of “flood plain” being denoted as “an area subject to the unusual and rapid accumulation or run-off of surface water from any source” (Page 3 Article II – Definitions) and added this can cover a lot of area(s) within Madison County.

County Attorney, V. R. Shackelford, III stated the definition further denotes the “flood plain district” and defines this as being shown on the maps; however, the requirements of the proposed Ordinance applies to flood plain districts (special) as shown on the maps.

Ruth Lillard asked if the maps are very similar to the older ones.

Betty Grayson stated the current maps are identical to the older maps.

Ruth Lillard asked if these changes were made because of FEMA.

County Attorney, V. R. Shackelford, III stated the changes were requested during the past summer and it was felt not to be very significant until the County was informed if this wasn’t completed, residents in Madison County would not be allowed to attain flood plain insurance.

Ruth Lillard also asked if a citizen does not wish to attain flood insurance, are they still bound to the contents in the proposed Ordinance, to which County Attorney, V. R. Shackelford, III all citizens in Madison County will be bound to follow the conditions as established in the Ordinance regardless as to whether they purchase flood insurance or not.

In closing, Ruth Lillard commented that if funding is received from the federal government, one must follow their regulations to the letter; she also commented on Page 9 Article VI – Existing Structures in Flood Plain Districts (i.e. historic structure[s]) and asked if repairs to historic structures can only be “a minimum necessary to preserve the historic character and design of the structure” and whether remodeling can be done for other uses non-historic in nature.

County Attorney, V. R. Shackelford, III stated the Ordinance denotes that repairs will not “prelude” the requirements and this has also been outlined with variances.

Ruth Lillard stated the Board of Zoning Appeals takes action on variances and asked how these would be approved if the regulations are followed as designated by FEMA.

County Attorney, V. R. Shackelford, III stated the Ordinance contains factors (A through M) that the Board of Zoning Appeals is to consider when they rule on a request for a variance – he stated he did not draft these items and they were received from FEMA and the State.

County Attorney, V. R. Shackelford, III stated should the County enact these guidelines; they will be locally active and a part of the County’s local Ordinance.

County Attorney, V. R. Shackelford, III stated there has been no change in what is currently in the County’s Flood Plain Ordinance and questioned whether anyone in a flood plain had applied for a variance; although it could happen.

Clark Powers stated the maps designated the degree to which any certain property resides in the flood plain and the extent of risk – this is based upon the distance from the body of water as designated from past history.

Betty Grayson stated she currently has three (3) complete sets of the map and one (1) partial set; she stated the cover letter indicated some additional maps will be forwarded at a later date.

Bob Miller asked if there was any indication of any GIS information to be forwarded to the County.

Betty Grayson stated there was nothing denoted in the letter; however, verbalizations were made earlier this might be forwarded in the form of a disk.

County Attorney, V. R. Shackelford, III stated correspondence indicated the maps have been computer generated – once all reports are printed, digital files containing flood hazard data for Madison County can be provided in a computer mapping system – the map assistance center will need to be contacted (i.e. toll free number).

Bob Miller suggested this information be requested for future reference.

Randall Lillard was present and asked if sludge would be allowed in a flood plain area; he further asked why this was of such concerns in reference to a case presented earlier in tonight's session.

Rodney Lillard stated there was no mention of this factor in the Ordinance.

Bob Miller stated the question was asked in that as the County moves forward in approving home sites, he feels it is encumbered upon the Board to provide for the safety and welfare of all citizens of Madison County; he stated if sludge has been applied to a location where a future home will be built, regulations indicate that sludge cannot be applied within a certain distance of a well site, home site or stream as there are setback requirements. He further indicated the reasoning for this factor is because sludge contains heavy metals and other toxic contaminants that remain in the clay soil.

James Hale commented that citizens are being encouraged to build in a flood plain and questioned the Flood Plain Ordinance.

Rodney Lillard stated the Flood Plain Ordinance does contain some restrictions as indicated in Article VI – District Provisions – Section 1.1 – General Provisions, Item D which indicates “no new construction or development shall be permitted within the flood plain district unless it is demonstrated the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the one hundred (100) year flood more than one foot at any point.”

Bob Miller asked a question pertaining to Article IV – District Provisions, Section 4.1 – General Provisions, item A which denotes that “all uses, activities, and development occurring within the Flood Plain District shall be undertaken only upon the issuance of a flood plain permit” and if a separate flood plain permit be issued or a building permit for someone who desires to build a structure in the proposed area.

Betty Grayson stated there is a flood plain permit and an elevation certificate that must be completed by the surveyor/engineer that denotes the flood plain area and the footage the structure will be situated above the area; she further stated there is something in the statewide uniform building code that Wes Smith, Building Official, also adheres to in addition to the aforementioned requirement.

Betty Grayson also indicated that during the meeting about six (6) months ago, the County was provided with updated flood plain permit and elevation certificate forms which had significant changes.

Bob Miller asked if there was a process for denial of the permit and under what basis was this done in conjunction with the Board of Zoning Appeals; he also stated the permit more than like contained criteria which the property owner would be required to meet.

Betty Grayson stated she felt if the surveyor didn't provide adequate information needed on the flood plain permit, it would be denied.

County Attorney, V. R. Shackelford, III stated he did not feel the Board of Zoning Appeals can change a certification by a surveyor; however, explained the process and the appeal process and all factors being investigated upon reapplication.

James L. Arrington raised concerns regarding the statements that have been crossed through in the Ordinance and how this would change the document.

County Attorney, V. R. Shackelford, III stated he felt those residing in a flood plain should be allowed to attain flood insurance; he stated the only changes being made to the existing Ordinance are the ones that have been underlined in the document.

Bob Miller suggested that "all uses" be removed and replaced with "all development occurring within the flood plain development."

Bob Miller also suggested County Attorney, V. R. Shackelford, III have his staff review the document and see that all statements are consistent throughout the entire document.

James Ballard suggested that copies not be made of the flood plain maps and suggested that a correct set be retained in the Zoning Office for review only.

Betty Grayson reminded the Madison County Planning Commission members that Disclosure Forms must be completed and filed by January 15, 2007.

**Article 11**  
**FLOODPLAIN MANAGEMENT ORDINANCE**  
**of**  
**MADISON COUNTY, VIRGINIA**

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF MADISON COUNTY, VIRGINIA, ESTABLISHING FLOODPLAIN DISTRICTS REQUIRING THE ISSUANCE OF PERMITS FOR DEVELOPMENT, PROVIDING FOR CERTAIN MINIMUM STANDARDS FOR DEVELOPMENT, AND PROVIDING FACTORS AND CONDITIONS FOR VARIANCES TO THE TERMS OF THE ORDINANCE.

BE IT ENACTED AND ORDAINED by the Board of Supervisors of Madison County, Virginia, as follows:

**ARTICLE 1 – GENERAL PROVISIONS**

Section 1.1 – Purpose

The purpose of these provisions is to prevent the loss of the life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

- A. Regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies.
- B. Restricting or prohibiting certain uses, activities, and development from locating within areas subject to flooding.
- C. Requiring all those uses, activities, and developments that do occur in flood-prone areas to be protected and/or flood proofed against flooding and flood damage.
- D. Protecting individuals from buying lands and structures which are unsuited for intended purposes because of flood hazards.

Section 1.2 – Applicability

These provisions shall apply to all lands within the jurisdiction of Madison County, Virginia, and identified as being in the 100-year floodplain by the Federal Insurance Administration.

### Section 1.3 – Compliance and Liability

- A. No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this ordinance and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this ordinance.
- B. The degree of flood protection sought by the provisions of this ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside the floodplain districts or that land uses permitted within such districts will be free from flooding or flood damages.
- C. This ordinance shall not create liability on the part of Madison County, Virginia, or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any decision lawfully made hereunder.
- D. Section 1.4 Replacement of Article 11 of Zoning Ordinance

This ordinance supersedes and replaces Article 11 of the Zoning Ordinance of Madison County, Virginia, which is hereby revoked.

### Section 1.5 – Severability

If any section, subsection, paragraph, sentence, clause, or phase of this ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this ordinance. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this ordinance are hereby declared to be severable.

### Section 1.6 – Penalties

- A. Any person who fails to comply with any of the requirements or provisions of this ordinance shall be guilty of a Class 1 misdemeanor and subject to the penalties therefore.
- B. In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this ordinance. The imposition of a fine or penalty for any violation of, or noncompliance with, this ordinance shall not excuse the violation or noncompliance to permit it to continue; and all such persons shall be required to correct or remedy such violations or noncompliance's within a reasonable time. Any structure constructed, reconstructed, enlarged, altered, or relocated in noncompliance with this



ordinance may be declared by the Board of Supervisors of Madison County, Virginia, to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this ordinance.

## **ARTICLE II – DEFINITIONS**

- A. Development – Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, the placement of manufactured homes, streets, and other paving, utilities, filing, grading, excavation, mining, dredging, or drilling operations.
- B. Flood – A general and temporary inundation of normally dry land areas.
- C. Floodplain – (a) A relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation; (b) an area subject to the unusual and rapid accumulation or runoff of surface waters from any source.
- D. Manufactured Homes – A structure, transportable in one or more sections, which is built on a permanent chassis, and designed to be used with or without permanent foundation, when connected to the required utilities. The term also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 days.
- E. Manufactured Home Park/Subdivisions – A parcel (or contiguous parcels) of land divided into two or more lots for rent or sale.
- F. Base Flood/One-Hundred Year Flood – A flood that, on the average is likely to occur one every 100 years (i.e., that has a one (1) percent chance of occurring each year, although the flood may occur in any year).
- G. Flood-Prone Area – Any land area susceptible to being inundated by water from any source.

## **ARTICLE III – ESTABLISHMENT OF FLOODPLAIN DISTRICT**

### Section 3.1 – Description of District

The Floodplain District shall include areas subject to inundation by waters of the one hundred (100) year flood. The basis for the delineation of the district shall be the one hundred (100) year flood elevations or profiles contained in the Flood Insurance Study for Madison County, Virginia, prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated ~~April 3, 1989~~ January 5, 2007, as amended.

The Special Floodplain District shall be those areas identified as an AE Zone on the Flood Rate Insurance Map included in the Flood Insurance Study prepared by FEMA and for which one hundred (100)-year flood elevations have been provided in the Flood Insurance Study but for which no floodway has been delineated. For these areas, the (100)-year base flood elevations shall be used.

The Approximated Floodplain Area shall be that floodplain area for which no entailed flood profiles or elevations are provided, but where a one hundred (100) year floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the Flood Insurance Study. For these areas, the one hundred (100) year flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific one hundred (100) year flood elevation cannot be determined for this area using other sources of data, such as U.S. Army Corps of Engineers Floodplain Information Reports, U.S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this elevation in accordance with hydrologic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently-accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review.

### Section 3.2 – Official Floodplain Map

The boundaries of the Floodplain District are established as shown on the Flood Insurance Rate Map which is declared to be part of this ordinance and which shall be kept on file at the Building & Zoning Office of Madison County, Virginia.

### Section 3.3 – District Boundary Changes

The delineation of the Floodplain District may be revised by the Board of Supervisors of Madison County, Virginia, where natural or man-made changes have occurred and/or where more detail studies have been conducted or undertaken by the U. S. Army Corps of Engineers or other qualified agency or an individual documents the need for such change. However, prior to such a change, approval must be obtained from the Federal Insurance Administration.

### Section 3.4 – Interpretation of District Boundaries

Initial interpretations of the boundaries of the Floodplain District shall be made by the Zoning Administrator of Madison County, Virginia. Should a dispute arise concerning the boundaries of the District, the Board of Zoning Appeals shall make the necessary determination. The person questioning or contesting the location of the District boundary shall be given a reasonable opportunity to

present his case to the Board and to submit his own technical evidence if he so desires.

### Section 3.5 – Records

Records of actions associated with administering this Ordinance will be kept on file and maintained in the offices of the Madison County Zoning Administrator.

## **ARTICLE IV – DISTRICT PROVISIONS**

### Section 4.1 – General Provisions

- A. All uses, activities, and developments occurring within the Floodplain District shall be undertaken only upon the issuance of a floodplain permit. Such development shall be undertaken only in strict compliance with the provisions of this Ordinance and with all other applicable codes and ordinances, such as the Virginia Uniform Statewide Building Code and the Zoning Ordinance of Madison County, Virginia. Prior to the issuance of any such permit, the Zoning Administrator of Madison County, Virginia, shall require all applications to include compliance with all applicable state and federal laws. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodway of any watercourse, drainage, ditch or any other drainage facility or system.
- B. Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc. within this municipality, approval shall be obtained from the Division of Soil and Water Conservation (Department of Conservation and Historic Resources). A permit from the U. S. Army Corps of Engineers and the Marine Resources Commission, and certification from the State Water Control Water Board may be necessary (a joint permit application is available from any one of these three organizations). ~~Further notification of the proposal shall be given to all affected adjacent municipalities. Copies of such notification shall be provided to the Division of Soil and Water Conservation (Department of Conservation and Historic Resources), and the Federal Insurance Administration.~~ Furthermore, notification of the proposal shall be given to all affected jurisdictions, The Department of Conservation and Recreation (Floodplain Management Program), and the Federal Insurance Administration.
- C. All applications for development in the floodplain district and all floodplain permits issued for the floodplain shall incorporate the following information:
  - 1. For structures that have been elevated, the elevation of the lowest floor (including basement).
  - 2. For structures that have been flood proofed (non-residential only), the elevation to which the structure has been flood proofed.

3. The elevation of the one hundred (100) year flood.
- D. No new construction or development shall be permitted within the floodplain district unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the one hundred (100) year flood more than one foot at any point.
  - E. Within any floodway area, no new construction or development shall be permitted that would cause any increase in the one hundred (100) year flood elevation.
  - F. All manufactured homes to be placed or substantially improved within the floodplain district shall be placed on a permanent foundation and elevated and anchored in accordance with the Virginia Uniform State Building Code.

#### Section 4.2 – Design Criteria for Utilities and Facilities

##### A. Sanitary Sewer Facilities

All new or replacement sanitary sewer facilities and private package sewage treatment plants (including all pumping stations and collector systems) shall be designed to minimize or eliminate infiltration of flood waters into systems and discharges from the systems into the flood waters. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding. In addition, they should be located and constructed to minimize or eliminate flood damage and impairment.

##### B. Water Facilities

All new or replacement water facilities shall be designed to minimize or eliminate infiltration of flood waters into the system and be located and constructed to minimize or eliminate flood damages.

##### C. Drainage Facilities

All storm drainage facilities shall be designed to convey the flow of surface waters without damage to persons or property. The systems shall ensure drainage away from buildings and on site waste disposal sites. The Board of Supervisors of Madison County, Virginia may require a preliminary underground system to accommodate frequent floods and a secondary surface system to accommodate larger, less frequent floods and a secondary surface system to accommodate larger, less frequent floods. Drainage plans shall be consistent with local and regional drainage plans. The facilities shall be designed to prevent the discharge of excess runoff onto adjacent properties.

D. Utilities

All utilities, such as gas lines, electrical and telephone systems being placed in flood-prone areas shall be located, elevated (where possible), and constructed to minimize the chance of impairment during a flooding occurrence.

E. Streets and Sidewalks

Streets and sidewalks should be designed to minimize their potential for increasing and aggravating the levels of flood flow. Draining openings shall be required to sufficiently discharge flood flows without unduly increasing flood heights.

Section 4.3 – Special Floodplain and Approximated Floodplain Districts

In the Special Floodplain and Approximated Floodplain Districts, the development and/or use of land shall be permitted in accordance with the regulations of the underlying area provided that all such uses, activities, and/or development shall be undertaken in strict compliance with the flood proofing and related provisions contained in the *Uniform Statewide Building Code*, as amended.

Within the Special Floodplain and Approximated Floodplain Districts, all new subdivision proposals and other purposed developments (including proposals for manufactured home parks and subdivisions) shall include within such proposals base flood elevation data. The applicant shall also delineate a floodway area based on the requirement that all existing and future development not increase the one hundred (100)-year flood elevation more than one foot at any one point. The engineering principle-equal reduction of conveyance-shall be used to make the determination of increased flood heights.

Within the Special Floodplain District, until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the areas of special flood hazard, designated as Zones A1-30 and AE on the Flood Rate Insurance Map, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within Madison County, Virginia.

Development activities in Zones A1-30, AE, and AH, on the Madison County, Virginia, Flood Insurance Rate Map which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the applicant first applies, with the endorsement of Madison County, Virginia, for a conditional Flood Insurance Rate Map revision, and receives the approval of the Federal Emergency Management Agency.

Within the floodway area delineated by the applicant, the provisions of Section 4.1 (E) shall apply.

## **ARTICLE V – VARIANCES: FACTORS TO BE CONSIDERED**

Whenever any person is aggrieved by a decision of the Zoning Administrator of Madison County, Virginia, with respect to the provisions of this Ordinance, it is the right of that person to appeal to the Board of Zoning Appeals for a variance. Such appeal must be filed in writing, within thirty (30) days after the determination by the Zoning Administrator of Madison County, Virginia. Upon receipt of such an appeal, the Board of Zoning Appeals shall set a time and place for the purpose of hearing the appeal, which shall be not more than sixty (60) days from the date of the receipt of the appeal. Notice of the time and place of the hearing of the appeal shall be given pursuant to Section 15.1-431 of the Code of Virginia (1950, as amended). The decision of the Board of Zoning Appeals may be appealed to the Circuit Court of Madison County, Virginia, by petition filed within thirty (30) days of said decision.

In passing upon applications for Variances, the Board of Zoning Appeals shall satisfy all relevant factors and procedures specified in other sections of this management ordinance and consider the following additional factors:

- A. The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any floodway area that will cause any increase in flood levels during the one hundred (100)-year flood.
- B. The danger that materials may be swept onto other lands or downstream to the injury of others.
- C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
- E. The importance of the services provided by the proposed facility to the community.
- F. The requirements of the facility for a waterfront location.
- G. The availability of alternative locations not subject to flooding for the proposed use.
- H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

- I. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
- J. The safety of access by ordinary and emergency vehicles to the property in time of flood.
- K. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site.
- L. The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- M. Such other factors which are relevant to the purposes of this Ordinance.

The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

Variances shall be issued only after the Board of Zoning Appeals has determined that the granting of such will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense, and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

Variances shall be issued only after the Board of Zoning Appeals has determined that variance will be the minimum required to provide relief from any exceptional hardship to the applicant.

The Board of Zoning Appeals shall notify the applicant for a variance, in writing, that the issuance of a variance to construct a structure below the one hundred (100)-year flood elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance.

A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances which are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

## ARTICLE VI – EXISTING STRUCTURES IN FLOODPLAIN DISTRICTS

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions, may be continued subject to the following conditions:

- A. Any modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any floodplain district to an extent or amount of less than fifty (50) percent of its market value, shall be elevated and/or flood proofed to the greatest extent possible.
- B. The modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its location in a floodplain district, to an extent or amount of fifty (50) percent or more of its market value shall be undertaken only in full compliance with the provisions of the Virginia Uniform Statewide Building Code.
- C. Uses or adjuncts thereof which are, or become, nuisances shall not be permitted to continue.

## ARTICLE VII – ENACTMENT

ENACTED AND ORDAINED THIS 9<sup>th</sup> DAY OF MAY, 1989 AND AMENDED THIS 3<sup>rd</sup> DAY OF JANUARY, 2007. This ordinance shall become effective upon passage.

Madison County Board of Supervisors

By: \_\_\_\_\_  
Eddie Dean, Chairman

Adopted by the Board of Supervisors of Madison County, Virginia, on January 3, 2007.

	Aye	Nay	Abstain
Eddie Dean	_____	_____	_____
James L. Arrington	_____	_____	_____
William L. Crigler	_____	_____	_____
Bob Miller	_____	_____	_____
Clark Powers	_____	_____	_____

\_\_\_\_\_  
V. R. Shackelford, III,  
Madison County Attorney



After discussion, on motion of Bob Miller, seconded by William L. Crigler, the Flood Plain Ordinance for Madison County is adopted and amended with suggested changes (i.e. “any development) as recommended by the Madison County Planning Commission, with the following vote recorded:

Eddie Dean	Aye
James L. Arrington	Aye
William L. Crigler	Aye
Bob Miller	Aye
Clark Powers	Aye

With no further action to be taken by the Board, on motion of James L. Arrington, seconded by Clark Powers, Chairman, Eddie Dean adjourned the meeting, with the following vote recorded:

Eddie Dean	Aye
James L. Arrington	Aye
William L. Crigler	Aye
Bob Miller	Aye
Clark Powers	Aye

Date: January 3, 2007